

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:08-CR-75-FL
NO. 5:19-CV-466-FL

UNITED STATES OF AMERICA

v.

CRUZ EDUARDO VALENCIA-ADATA

UNOPPOSED MOTION FOR
VOLUNTARY DISMISSAL OF PRO-SE
PETITION
Fed. R. Civ. P. 41(a)(2)

Defendant Cruz Eduardo Valencia-Adata, by and through undersigned counsel, respectfully requests that the Court grant a voluntary dismissal of Mr. Valencia-Adata's pending *pro-se* petition in Case No. 5:19-CV-466-FL, brought pursuant to 28 U.S.C. § 2255, and based on *United States v. Rehaif*, 19 S. Ct. 2191 (2019). Docket Entries (DE) 107, 108.

In support, counsel presents the following:

1. On October 22, 2019, Mr. Valencia-Adata submitted a *pro-se* motion pursuant to 28 U.S.C. § 2255, based on *United States v. Rehaif*, 19 S. Ct. 2191 (2019). DE 107. The Government responded with a motion to dismiss on December 23, 2019. DE 115. On January 31, 2020, United States Magistrate Judge Robert T. Numbers, II, issued a Memorandum and Recommendation, recommending dismissal of Mr. Valencia-Adata's § 2255 motion. DE 122. That recommendation relied in part on the conclusion that his motion was time-barred, since the Supreme Court had not made *Rehaif* retroactive. *Id.* at 6.
2. After the issuance of the Memorandum and Recommendation, the Fourth Circuit

Court of Appeals held that an error based on *Rehaif* was structural and retroactive. *United States v. Gary*, 954 F.3d 194 (4th Cir. Mar. 25, 2020).

3. Counsel entered a limited notice of appearance on April 8, 2020, pursuant to the Court's Standing Order, 20-SO-2, to determine whether Mr. Valencia-Adata qualified for post-conviction relief, based on *Rehaif*.
4. On April 23, 2020, with the consent of Mr. Valencia-Adata, counsel filed a motion to delay ruling on his pro-se petition, pending counsel's review of Mr. Valencia-Adata's case. DE 127. The Court granted this motion. DE 128.
5. Counsel reviewed his case, and spoke with Mr. Valencia-Adata by phone. During this phone conversation, Mr. Valencia-Adata requested that counsel move to voluntarily dismiss his pro-se petition, and file a new petition. On June 17, 2020, counsel filed a new petition to vacate the conviction and sentence for Count 2 of the Second Superseding Criminal Information, based on *Rehaif* and *Gary*. DE 129, 130.
6. Counsel has consulted with Assistant United States Attorney Asia J. Prince, who does not oppose this motion.

For these reasons, Mr. Valencia-Adata requests that the Court grant his motion for a voluntary dismissal of his pro-se petition in Case No. 5:19-CV-466, without prejudice to the new petition filed June 17, 2020, DE 131. Fed. R. Civ. P. 41(a)(2).

Respectfully submitted this 18th day of June, 2020.

G. ALAN DuBOIS
Federal Public Defender

/s/ James E. Todd, Jr.
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LR 57.1 Counsel
Appointed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

ASIA J. PRINCE
Assistant United States Attorney
Eastern District of North Carolina
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

by electronically filing the foregoing with the Clerk of Court on June 18, 2020, using the CM/ECF system which will send notification of such filing to the above. Counsel will also mail this motion to Mr. Valencia-Adata at the following address:

Cruz Eduardo Valencia-Adata
Reg. No. 51077-056
USP Lewisburg
U.S. Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

This the 18th day of June, 2020.

/s/ James E. Todd, Jr.
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